

# **POLICE AND POLITICS**

## **LECTURE\* WITH FOREWORD**

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(1999)

### **Foreword: Civilian control and the Hungarian Helsinki Committee<sup>0</sup>**

The international association established for the oversight of society on law-enforcement agencies (International Association for Civilian Oversight of Law Enforcement - IACOLE) is a professional organization exclusively built up of members who are employees of organizations which were created by the legislative or executive powers to investigate and/or oversee complaints concerning law-enforcement agencies. Members of law-enforcement agencies under oath may not become members of the association, and members of other Non-Governmental Organizations may only become associated members without the right of voting.

Society considers - according to the information booklet of the association established in 1985- three institutions to be authorized to deal with complaints concerning the police - the attorney's department, the court and the media. Yet the attorney's department may, on one hand, only deal with those complaints in full detail, which relate to a crime, and on the other hand as an authority on indictment continually cooperates with the police, and thus will not willingly bring a charge against the police. The courts lack the necessary instruments for the oversight of the police, whilst the media is controlled by its own inner dynamics: legal offences committed by the police and the investigations tied to this will only hold the public's interest for a short while. Finally, if a police authority conducts the investigation of a complaint, the trustworthiness of such an investigation will be doubtful in the eye of the public, from the outset.

We might add the following to the American summary based upon the local legal system and practice: The attorney's department oversees the investigations and oversees the observance of the regulations concerning the detained. With its dual authority it may observe minor violations, which are not considered to be crimes. Yet it is true in the case of Hungary as well that the attorney's department as an organization must concentrate on the successfulness of the investigation and on the legality of the handling of the suspect. These interests conflict with each other all the time, and especially in the case of minor violations, the attorney's department's authority on indictment seems to be the stronger of the two. Based upon Hungarian law, with the exception of several cases of civil action, criminal prosecution may not

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\* The lecture was delivered on 8 September 1999 in Sydney. Because of the brevity of time I shortened the text and on the occasion of the current publishing I added several paragraphs on secret information gathering. Because of the foreign audience I stated several facts that are commonplace for the Hungarian readers. The COLPI and the Soros Foundation supported the participation at the conference.

be initiated without the attorney's proposal - this may be somewhat modified by supplemental civil action.

The media is further constrained, besides decreasing public interest, by the fact that the police may feed information to the media in the way it sees fit. Although information of public interest does concern the public, the publishing of information may be refused at any time by the police, through a referral made to the law on secrets of the state or service, the interest of the investigation, or the protection of the personal rights of the police officers under complaint.

To supplement the traditional exterior control of police activity a system was devised in the mid-eighties, primarily in Anglo-Saxon countries, which provided participation for the citizens in the observation of police activities and the investigation of complaints. According to the information booklet of the IACOLE, the civilian oversight was organized at the local-governmental level in the United States, belongs to the scope of operation of the governments of the federal states or the provinces in Australia and Canada, whilst in Great-Britain the government itself is responsible for the establishment of the organs of civilian oversight.

In Hungary - as in numerous countries of Europe or South America - a function similar to the Anglo-Saxon civilian oversight is primarily upheld by the position of the ombudsman. In the Netherlands the ombudsman is virtually an authority of appeal. If the results of the investigation of a complaint, initiated by the mayor and conducted by the police complaint committee comprised of independent individuals working side-by-side with the police is not satisfactory for the plaintive, he or she may turn to the ombudsman, who, with the exception of clearly unfounded complaints, is required to reinvestigate all complaints.<sup>1</sup> In Australia, the ombudsmen and the complaint committees of the federal states work together with the committees of the police overseeing professional norms.

The system of civilian oversight is in close relation to the structure of the police: the members of the complaint committees of Australia and the review boards of Canada, or the United States are comprised of citizens of the local community, and the credibility of their operation is secured by the trustworthiness of their members.

A separate part of the civilian oversight of the police is the monitoring of police detention-facilities. The circular letter of the British Home Office of 1986 made possible the entrance of „lay visitors” to police detention-facilities in England. Although the system was adopted in only a few countries, a group of representatives in the General Assembly of the European Council brought forth a proposal in 1998, which recommends the establishment of civilian detention-facility monitoring programs for all member countries.

In Hungary before the transition all political parties, in fact, the Ministry of Interior as well, thought that the local governments would play a vital role in the maintenance of public security and in the local supervision of the police responsible for public security. Yet, after its accession to office, the first freely elected government assumed

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<sup>1</sup> Lene Johannessen Wendland: The impact of External Visiting of Police Stations on Prevention of Torture and Ill-Treatment. APT. Geneva, 1999, p. 42.

the position of maintaining a centralized police force. The only trace of the concept of local-governmental policing, was the fact that the local governments could veto the appointment of police-chiefs until 1994. The law on policing changed the veto-right to a complicated system of rendering account the police leadership. If the local government (or the majority of local governments in the area of jurisdiction) refuses to accept the report of the police commissioner, or police chief for the second time, than the superior of the police leader is required to conduct a comprehensive investigation, and to inspect the serviceability of the police chief (or commissioner) [Act XXXIV of 1994, Art. 8, para 5.]. Therefore the right of investigation is not relinquished from the inner circle of the police, even in the case of exceptionally great local-governmental discontent. During the preparatory discussions of the six parties for the acceptance of the law on police, the police vehemently objected to all proposals, which would include representatives of the local governments in the investigative procedure designated by law. This closed attitude of the police, which rejected all exterior control was breached by the modification of 1995 to Act LIX of 1993 on the human rights commissioner of the General Assembly; the modification terminated the authorization of the national police commissioner to restrict the rights of the commissioner, elected with the qualified majority of the General Assembly, when reviewing police documents. It was in this legal environment, and with this tradition of the police in the background that Gábor Kuncze, Interior Minister stated during the meeting of the General Assembly's human rights committee, that he feels the NGO's should observe the operation of the law enforcement agencies under the direction of the Interior Ministry, and should take a strong line in the protection of human rights.

In 1995 three non-governmental organizations, the Hungarian Human Rights Protection Center (MEJOK), the Hungarian Helsinki Committee and the Veritas Foundation received permission to conduct intensive monitoring for the duration of a week at the immigration hostel of the Kistarcsa Police Regiment.<sup>2</sup> In 1996 the Hungarian Helsinki Committee made a verbal, and in 1997 signed a written agreement of cooperation with the National Police Headquarters. Based upon the agreement the monitoring groups of the committee may enter, without any previous notification, police detention-facilities, or retaining areas and may, with security control, but without supervision, talk to the detained, and may with their permission view the documents concerning their detainment. Since the signing of the agreement the leadership of the National Police Headquarters has changed twice, in 1998 a new government was elected, yet the Detention-facility Monitoring Program is still currently undergoing, with basically the same rules. The experiences of the first year's intensive monitoring work in 1996 were collected in the work entitled Punished Before Sentence.<sup>3</sup>

The social organization APT (Association for the Prevention of Torture) in close cooperation with The European Committee for the Prevention of Torture (CPT) published a book-length study on the different applied models of detention-facility monitoring in England and Wales, Northern Ireland, The Netherlands, South Africa

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<sup>2</sup> The human rights report of the Hungarian Human Rights Protection Center (MEJOK), the Veritas Foundation and the Hungarian Helsinki Committee on the immigration hostel of the Kistarcsa Police Regiment. A publication of the Hungarian Helsinki Committee. Budapest, 1995.

<sup>3</sup> Punished Before Sentence. Detention and Police Cells in Hungary, 1996. Constitutional and Legislative Policy Institute - Hungarian Helsinki Committee. Budapest, 1998

and Hungary. The Hungarian program - according to the author, Lene Johannessen Wendland - „provides a new and creative example of introducing the civilian oversight of the police in a country where there is no rich tradition of the social control of the police [...] It is great luck that a strong local NGO organizes the monitoring with the contribution of professionally prepared monitors. The strong organizational ties created between the organization of the police and the external monitors in Great-Britain and the Netherlands would probably injure the authenticity of the monitoring in Hungary.” And finally: „The fact that the program has been going on for awhile is a sign that the political leadership of the police desires a more clearly comprehensible police, which has the chance of the society respecting it more.”<sup>4</sup>

The international interest in the Hungarian Detention-facility Monitoring Program is indicated by the fact that the Hungarian Helsinki Committee received an invitation to the Strasbourg convention of the European Council's program entitled Police and Human Rights 1997-2000 and delivered a report on the practice of detention-facility monitoring.<sup>5</sup> The representative of the Ministry of Interior was present as an official participant of the program.

The civilian oversight of the police is conducted, in those countries where there are such bodies in existence, by a competent agency - a public body appointed by the local or regional (self) government - of the state power comprised of independent individuals. To have an NGO, therefore an organization independent from the government and without any license of power, visit police detention-facilities is an exceptional and unique phenomenon. The activity of the Hungarian Helsinki Committee can under no circumstances be called civilian oversight, since the practice of maintaining an oversight supposes a certain jurisdiction specified by law. The committee does not control or supervise but merely observe, identical to the right of the media and all citizens and to observe the operation of state agencies and formulate an opinion based upon his or her experiences. Naturally in order to observe the activity of law enforcement agencies - if not required by law that they tolerate this civilian oversight - it is necessary to obtain their permission to do so. The agreement between the National Police Headquarters and the Hungarian Helsinki Committee acts as a substitution of the civilian oversight not required by law, but which is increasingly indispensable in the process of European integration. We cannot decide today, whether the detention-facility monitoring conducted since 1996 is an intermediate solution, which was created in an opportune moment by the need for civilian oversight and by the lack of regulatory legislation or a trail-blazing endeavor which might prove to be a lasting innovation in the history of civilian oversight<sup>6</sup>.

I was invited as a lecturer to the IACOLE's conference in Sydney by the president of the organization, Marc Gissiner. It seemed obvious that I discuss the Hungarian Helsinki Committee's Detention-facility Monitoring Program, since the ombudsmen, judges and members of the complaint- and monitoring committees mainly from

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<sup>4</sup> Wendland: p. 13.

<sup>5</sup> 'Human Rights and the Police - Empowering by Co-Operation and Exchange' Report of the second Working Conference organized under the program 'Police and Human Rights 1997-2000' held at the Council of Europe, Strasbourg, 3-4 June 1999, p.27

<sup>6</sup> Based upon the agreement signed between the National Penal Command and the Hungarian Helsinki Committee on 28 December 1999 the committee may monitor the observance of the rights of the convicts in the penitentiaries.

Anglo-Saxon, southeastern Asian and Latin-American countries were interested within what framework, with what legal licenses, with what restrictions and finally with what effectiveness could an NGO monitoring police detention-facilities operate, especially in a post-communist country where there is no tradition of the civilian oversight of the police. The only argument against this choice of subject was that the report on the detention-facility monitoring had been published in English, furthermore I myself gave a lecture in 1998 on the legal problems concerning the program at the conference of the APT and the COLPI in Budapest.<sup>7</sup>

Yet this was not what prompted me to speak about another subject. I found out that my lecture was scheduled in the section, which dealt with the political use of police. The political use of police is dealt with at the level of police governance; oversight independent from the governing power may hinder the police leadership's abuse of their rights at the most.

I was therefore honored the subject chosen by the organizers of the conference and I discussed the issue designated by the title of the work.

### **Who is Using Whom?**

In parliamentary democracies, the civilian oversight of police – or more generally speaking, law enforcement bodies – is a multi-branch and multi-tier scheme, realized in the cooperation of participants from the central and local governments, the legislature, the judiciary, various independent groups monitoring compliance with international treaties, the public and non-governmental organizations. The concept of civilian oversight cannot be interpreted solely as the activity of civil society that does not possess public power. In parliamentary democracies, parliament and government function on the basis of the authorization vested in them by the voters, that is, the whole society. In other words, the governmental and parliamentary direction and control of the police is, after all, direction and control originating from society at large. In reality, however, the interests of the parties, ministries, law enforcement agencies, and of course economic interests distort this ideal model to such an extent that the representation of voters hardly comes through in the governmental and parliamentary direction and control of police. Therefore it is very important that ombudsmen and non-governmental organizations should oversee the functioning of law enforcement agencies – with special emphasis on the protection of fundamental civil rights – as well. The previous receive their mandate from parliament but operate independently of parliamentary parties and the government. The latter embody direct democracy within the system of representational democracy: they participate in the oversight of the police based on the premise that all members of society are authorized to do so, since the police is formed and maintained by all members of the society.

The term „political use of police” usually evokes negative feelings, although in constitutional democracies it should be natural that since it is the government that defines a country's policies (within constitutional limits, of course), the government is

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<sup>7</sup> The Prevention of Torture in Central Europe. Acts of the Seminar organized by the APT and COLPI in Budapest, Hungary, 18-19 June 1998, Geneva, 1999, p. 27-32.

authorized to realize its political goals in managing the institutions as well. This is usually manifested in introducing laws and adopting decrees, but also in the day-to-day definition of tasks for the state organs. Based on the authorization of the voters, the government may appoint priorities for the police, such as what to consider more important within the fight against crime and the protection of public safety. For example, should the police prevent and investigate rarely occurring but shocking acts of terrorism, or should they instead concentrate on reducing the number of house burglaries, or perhaps even that the police itself should be more keen on exposing and punishing police officers who abuse their power?

The political use of police in the above-described way is not a constitutional or professional question, but a political one. If public opinion, the majority of the citizens approve of the government's crime and public safety policy, or if the government is able to convince the public that their course is right, it's a good point for the government, if not, it's a bad point for them. In this sense, the government's police policy is under the strictest of civilian oversight, because if the public is very dissatisfied with the performance of the police, they government may lose in the next elections. Of course we all know that there are few things as effective in manipulating the public as creating fear of crime. This also has its limits, however. As much the public is irritated by crime, the power of an omniscient and omnipotent police will be equally irritating after a certain time.

We talk about the political use of the police in a negative sense when a government – or a political group behind it – forces the police to execute the basic tasks of public safety maintenance and crime fighting primarily according to the interests and intentions of the ruling government or political clique. In this sense of the term it was possible for the police – or part of the police – to become a tool in overthrowing constitutional democracies and maintaining totalitarian dictatorships. This is what happened in Eastern and Central Europe after World War II: the communist party, striving for absolute power, endeavored to take control of the police everywhere, so that they could strike the groups in opposition with the tools of the police.

The political misuse of police, however, does not take place only in the extreme environment of a developing or established dictatorship. It's also a form of misuse when a constitutional government forces the police, or other law enforcement organs, to execute measures which the laws do not authorize them to do, or which are downright contrary to the laws.

In the relationship between politics and police, the police are not solely a passive player, a victim of power abuse. The police take on an active role when – during the political tug-of-war – the police, or rather, its leadership, tries to make sure that its own organizational and financial needs are met. In some cases this effort may be so successful that in the end it's hard to tell if it's government misusing the police, or the other way round.

Let me now tell you a few examples for the above, from the history and practice of the Hungarian Police – since, naturally, I understand Hungarian state of affairs the best. These Hungarian examples are not special in any way, moreover, they demonstrate correlations and tendencies which can be observed everywhere around the world.

Therefore, these examples are able to demonstrate how a totalitarian system interprets the function of the police, how a government is able to misuse its power even in a constitutional democracy, and how the rightful battle of police, resisting the subjugation to politics, transforms into a struggle aimed at getting rid of all external control while conquering a larger and larger sphere of life.

### **Part 1: The Fist of the Party and the Police's War of Independence**

„The police is a branch of public order management whose procedures should be defined not by progressive notions, but by the needs and requirements of good public order management – except for the requirement of more democratic case handling.”<sup>8</sup>

These words were written in 1945 by Istvan Bibó, the famous Hungarian political thinker, who was Minister of Interior during the 1956 Revolution. According to the theory of the Communist Party at that time, the police was a tool in the hands of the given ruling class. The democratic police take part in the revolutionary fight for people's democracy as the people's police. In this context, the people's democracy was the period preceding the total communist take-over, a time when the parliament and political parties could still function, but their political space was increasingly limited by the Communist Party and the invading Soviet military power behind it. In the framework of „taking part in the revolutionary fight”, the police – or rather its so-called „state defense department” – commanded and controlled by the Communist Ministry of Interior, arrested everyone opposing the extension of communist rule, under suspicion of „war crimes” or „high treason”. Istvan Bibó was attempting to condemn this practice in his controversial essay titled „The Crisis of Hungarian Democracy”, calling attention to the dangers inherent in using the police as a „progressive”, revolutionary force.

After the communist take-over – officially after January 1, 1950 – the function of direct political oppression was transferred to an organ that was even formally separate from the police itself: the State Defense Authority. This agency was actually commanded by the leader of the Communist Party, and which not only had a whole system of detectives and informers, but also its own armed forces. From then on the role of the police became secondary to the state defense authorities, although naturally the police, like all other organizations of public life was overseen by the Communist Party, in accordance with the basic principles of a communist state. Pushing the police to the background contributed to the fact that during the 1956 Revolution the police remained „neutral”, moreover, the police chief of Budapest prohibited the use of weapons against those taking part in the uprising.

Following the stifling of the revolution, the political leadership „hid” the hated state defense organization behind the facade of the police. Even though the leadership and organization of the state defense apparatus was still separate from the Police within the Ministry of Interior, for outsiders, the state defense officers were simply police officers. In the 80's the interrogation of the members of the political opposition, the „dissidents” was carried out in police buildings. In many cases the doorman often did not even know where the summoned needed to be directed, because the state defense

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<sup>8</sup> István Bibó: The Crisis of Hungarian Democracy. (1945) In: István Bibó: Selected Studies, 1945-1949, Budapest, 1986, p. 41.

detective himself was a guest in the building. The armed forces of the state defense authority were ceased in the beginning of the 60's: the peaceful political demonstrations preceding the fall of communism in 1989-90 were beaten down by the police, at the order of the communist party.

It is therefore understandable that on the threshold of change one of the first demands of the democratic opposition was to separate the state defense organization from the police and from the Ministry of Interior, so it may become *visible* – even if not *transparent*.

This what the leaders of the police wanted too, because they had had enough of the arrogance of state defense officers who earned much more money than them. But the police also wanted to get out of the system in which the first man of the police reported directly to the Minister of Interior, who in turn was nothing more than a servant to those principles and commands which were issued by the central bodies of the communist party.

The battle of the police against the domination of politics was a contradictory process. On the one hand it was the police's war of independence against the Party, while on the other hand it entailed the intention of the police to get rid of all sorts of external control, be it governmental or other. The latter effort had direct political reasons. The reform communists in the Ministry of Interior, who worked out the legislative changes related to the transition, wanted to „save” the police – 90% of whom were Party members – from subordination to a non-communist Minister of Interior in the future first freely elected government. As a result, in March 1990, a month before the elections, one of the last laws passed by the Communist Parliament (Act XXII of 1990) deprived the Minister of Interior from giving any orders to the police or to the national chief commissioner of the police. This limitation, which was in effect until 1994, when the new law on police was passed, did not mean that the government and its Minister of Interior instructed the police solely by way of laws. Rather, it meant that civilian and governmental oversight was practiced in an informal manner – that is, over the phone. Whether the police – the national chief commissioner – obeyed these informal orders or not depended on the person of the Minister, on the nature of the order, and on what was offered in exchange for the „loyalty.”

The police's war of independence against the direct subjugation to the state party was waged in the 18-month period preceding the first free elections. The decade before the transition, the „liberal” epoch of the communist party's absolutism, which the world press referred to as „goulash communism”, was characterized by another type of independence effort. As the power of the state defense authority was withering away, the strength of the police began to increase. For example, as more and more people were permitted to travel abroad, as the circulation of more and more „illegal” (i.e. uncensored) publications had to be tolerated (despite continuous harassment from the state security organs), the police's permitted field of action in public safety grew larger and larger. These new powers primarily inflicted the poorest groups in society (above all the Roma minority) and not the political opposition. The time period of police supervision was raised to 3 years, the maximum time of police detention without court decision, to be used for minor offenses, was increased from 30 days to 60. When large-scale unemployment became prevalent, the institution of „severe



correctional-education work” was introduced: those without income could be sentenced to prison by court and to (forced) labor at a designated employee. A 1984 government decree authorized policemen to search anyone’s car, packages, and clothing and to interrogate him / her without any special authorization and suspicion of crime during an „identity check”. A few of these licenses, for example police detention and severe correctional-education work, were abolished during the transition, when basic norms of democracy were incorporated into the Constitution. Other powers, however, such as the regulations regarding „identity checks” survived the transition. The governmental decree issued in 1984 was included in the Law on Police ten years afterwards, a bill which was accepted by Parliament’s qualified majority. Based on this law, the Hungarian police carries out about 1,200,000 identity checks annually, searches the trunks of cars and empties the pockets of people on a regular basis. This is how military authorities proceed in an invaded country.

### **Public order versus legal order**

The communist state never had to explain anything. No one was allowed to publicly object police actions based on political decisions. (And even if they did, it was really easy to adjust the law to justify the authoritarian practice.)

A government under the rule of law, however, must explain measures that are not properly supported by laws. The second, quite autocratic Minister of Interior of the first freely elected government declared the following on March 25, 1992: „Many people debate whether this or that has a legal basis or not. We don’t have time to get into this. What we are doing is protection of the *nation*.<sup>9</sup>” This announcement was spurred by a new government measure which, in lack of an immigration law and citing an old decree passed by the party-state, authorized the border guards to refuse entry to foreigners who had proper travel documents but were not able to show evidence of „sufficient funds” to finance their stay in Hungary. As the Minister himself said, based on this measure 2,500-3,000 people were turned back from the Hungarian-Romanian border each day. Since it was never defined what „sufficient funds” meant, autocracy, corruption and discrimination reigned at the border. Especially Gypsies and Africans as well as other colored people wishing to come in via Romania were turned back. Illegal Romanian workers, who are able to enter Hungary without a visa for 30 days and therefore must leave the country and re-enter again and again, were often only let in for a hefty „fee”. In the meantime, public safety had not improved a bit, and neither illegal foreign labor, nor the smuggling of goods across the border disappeared. The measure was only good for one thing: to suggest a correlation between rising crime rates and foreigners, especially ones from eastern countries. But let’s forget about whether the measure was successful or not. The danger is actually in the philosophy explaining the measure: that laws can be superseded by the interest of the nation, which, in turn, is defined by the government. Public order is more important than legality.

The past year produced another example of the authoritarian tightening of immigration laws, this time not without authorization but in contradiction of current laws. The national chief commissioner of the police and the national commander of the border

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<sup>9</sup> Péter Boross, at the meeting of the Hungarian Democratic Forum’s 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> district organizations, March 1992.

guards issued a joint order in August 1998 prohibiting illegal immigrants – mostly Kosovars or Afghans asylum seekers, Bangladeshi and Pakistani economic migrants – to leave the so-called „community shelters” where they must stay. The law, however, clearly states that assigning a compulsory place of stay does not qualify as detention, and illegal aliens’ freedom of movement in Hungary may only be restricted as much as the immigration procedures require (Act LXXXVI of 1993 Art 43, para 1 and government order 64 of 1994, Art 54). This time the measure was introduced in the framework of the campaign against organized crime, although civil war and economic refugees are victims, rather than actors of organized crime – namely, human trafficking. The border guards officers who executed the measure were generally aware of this. However, when questioned by civilians, they answered the same way as war criminals after World War II: I am a soldier, I have to carry out my orders.

The most obvious case for political misuse of police is when the government orders the police to commit illegal actions for plain party interests, and not even for real or imagined public interest. In the fall of 1992 the political battle escalated between several platforms within the Parliament. On the one hand, the governing conservative parties and the liberal opposition engaged in a more and more bitter fight. On the other hand, two cliques within the coalition’s leading party, the one headed by the moderately conservative Prime Minister, and the other, an ultra-right wing group calling themselves „national radicals” had more and more conflicts. The ultra-right wing group concentrated their attacks on the state-run television, which they condemned as „too liberal”. The leader of the radicals declared: he wants to see the managers of the TV led out of the building by the police. The party was preparing for the national convention where it was to be decided whether the Prime Minister or the leader of the radicals will be the first man of the right wing. As the situation got out of hand, the Minister of Justice filed a report against two of the TV station managers on suspicion of financial corruption. The Minister of Interior summoned the national chief commissioner of the police and the head of the national investigating unit to the Parliament. He ordered them to immediately start investigating the case. A young police detective, who had previous experience dealing with complicated financial crimes, was assigned to the case. However, he soon indicated that the data contained in the complaint was insufficient for initiating a criminal procedure or carrying out a house search. According to Art. 126 of the Criminal Procedure Code, a supplementary complaint must be filed. Based on the new information, the investigating authority will then decide whether or not the criminal procedure will be started. Contrary to him, the head of the police investigating unit regarded the words of the Minister as a command. He did not consider the professional arguments, and maintained his order: the officer must escort the TV managers out of the building and search their apartment. The officer did not refuse the order, since by doing so he would have committed a military offense. Immediately after the house search, however, he asked to be discharged. The investigation continued for several months. Close to 800 employees of the TV were called in as witness, but in the end the public prosecutors refused to bring charges for lack of evidence. The young police officer was transferred to the Finance and Customs Police, and the radical leader left the coalition and formed his own party – otherwise everyone remained in their place. The governing party, however, suffered a severe defeat in the next parliamentary elections.

## **Part 2: The Police’s War of Independence**

Prior to the 1990 elections, the leadership of the police denounced its former activities during the communist state. „Our police had a wrong concept regarding its function right up till recent times,” said Andras Turos, national chief commissioner of the police, and – at that time – ex officio deputy to the Minister of Interior. „We thought that our basic role was to protect socialist society”. In the meantime, the self-criticism continued and the real vocation of the police, apprehending criminals, had lost its proper emphasis. went on the self-criticism.<sup>10</sup> (Magyar Nemzet, February 1990.)

Parallel to the self critique, the police started, or rather accelerated its struggle for independence, asking for more money out of the state budget, and trying to regain its licenses which had been lost during the transition to democracy. The police supported both of these demands by citing rising crime rates, the deterioration of public safety. (It is true that the number of reported crimes drastically rose in 1989, and has been rising ever since. Nevertheless, the number of crimes per 100,000 people still does not exceed the Western European average.) Police propaganda continues to explain the deterioration of public safety with the argument that due to political transition (i.e. democracy), poorly equipped and underpaid police officers became uncertain as to their tasks.

Thanks to its tireless efforts, the police have become one of the most powerful lobbies amongst the state institutions. Since 1990, all governments (regardless of party inclinations) have designated the improvement of public safety as their first priority. Therefore, the size of the police and their budget has been steadily increasing. The permanent professional staff of the police went from twenty thousand (in 1989) to thirty-two thousand five hundred. This means that there is one policeman for every 330 citizens. This number does not include the twelve thousand border guards, a separate corps serving police functions in the border zone. According to the Law on Police, the Minister of Interior „represents the police during sessions of the Parliament and the government.” (Act XXXIV of 1994 Art. 4, para 3 a.) Ministers – as members of the government – control the organizations supervised by the government. But a Defense Minister commands, and does not represent the army, likewise, a Finance Minister regulates but does not represent the Tax Authorities. It is only the Law on Police that transfers representational obligation or right to a member of the government. What this implies is that the police, a state organ, has certain sovereignty against the state and the main bodies of state power. In such state of affairs the question can be posed: is it politics using the police, or is the police using politics?

Before the transition, it seemed obvious that in a future democracy police officers would be civil servants and not soldiers. As a first step, the first Minister of Interior of the freely elected government ordered the de-militarization of policemen performing duties of civil servants in the Ministry. The Independent Trade Union of Policemen objected this decision, because military status of police officers entailed a number of advantages: lower retirement age, rank entitlements, fully paid sick leave, etc. Policemen would have lost all of these benefits had they been converted into civil servants. The Trade Union brought the case to court and won. This was the first example when the police managed to protect its own interests against those of the

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<sup>10</sup> A round-table discussion organized by the Magyar Nemzet. Quote from Ottília Solt: Dignity for Everyone volumes I-II. An edition of the *Beszélő*, 1998, II. volume, p. 401.

state administration. Another interesting point in the failure of „civilizing” the police was when the first national chief commissioner of the police, who had no past with the police but enjoyed the support of the Minister, had to leave his post within half a year. His successor was again a police officer.

The second Minister of Interior of the transition abandoned the reform efforts of his predecessor. Instead, he tried to secure the loyalty of the police – or rather, the leadership of the police – with personal politics.

In Hungary there was no cleansing within the staff of the police following the transition. (Even at the state defense authority, cleansing was only partial.) Although 180 higher ranking police officers voluntarily left the corps prior to the elections, policemen who beat down demonstrations, harassed the opposition, and directed assaults against Gypsy settlements stayed in their jobs and no one questioned them. Based on a legal authorization, the new government intended to filter the police by introducing an application system. The county and town police chief positions had to be filled by inviting applications even if the positions were already filled. As another filter in the system, the local government had the right to veto the appointment of a city police captain. This right, however, did not apply to the appointment of county police chiefs, who had much more decision-making power.

The new Minister of Interior, stepping into office in January 1991, interpreted this provision of the law in a particular manner. According to him, the law did not prescribe that the post must be given to the person whose application materials were judged to be the best by the professional board. Filing the application is sufficient for winning the appointment. Thus the minister often chose to appoint applicants who were only ranked third, fourth, or even last by the professional board. „I am following Napoleon’s principle,” said the Minister in the hallway of the Parliament. „I select my generals from the less qualified positions. That way, they will never forget whom to be thankful for their glory.”

The Law on Police, passed in 1994, liberated the police from both of its main curses: the application system and the local government’s right to veto. Ever since then, the career, honor or discharge of a police officer has depended on no one else but his supervisors, in essence, the national chief commissioner of the police, whose fate is in the hands of the government and the Ministry of Interior.

In exchange for total subjugation to the government, the police was permitted to keep and to regain its licenses, to widen its scope of activities, and – as a consequence of the latter – to increase its lobbying power. The police’s drive for power coincided with the etatist government philosophy, regardless of whether the government was a conservative or socialist one. The police was just as effectively lobbying between 1994 and 1998, when the Minister of Interior was a leader of a liberal party, the coalition partner of the Socialists.

During the liberal leadership of the Ministry of Interior, the government introduced a law about the service relations of persons employed by the armed forces, that is, soldiers, border guards, police officers, customs and prison guards, firemen and members of the national security service. This law, contrary to the recommendations

of the Council of Europe, declares that a policeman is a soldier, who must fulfill even illegal orders, otherwise he /she may be prosecuted [Act XLIII of 1996 Art. 68, para 2]. The trade unions of law enforcement bodies played a significant role in preparing the law. As a result of their pressure, military status entails such benefits that changing the law or trying the „civilize” the police force would not be possible without getting into a painful conflict with the police.

The law enforcement lobby managed to obtain many other of its goals, despite – or rather, behind the back of – the liberal Interior Ministry leadership. In 1996, as part of a law about economic policy, the task of issuing identity cards was again assigned to the police, even though according to a previous law this task should have been taken over by local public administration. In 1995, the police, interpreting a new Service Regulation issued by the Minister of Interior, authorized itself to conduct large scale raids spanning huge territories, even the whole country. Thousands of pedestrians and vehicles may be stopped and checked during these raids. (Most major, well-publicized crimes were followed by such raids, usually without any result.) In the guise of an MP’s modification motion, the Ministry of Interior managed to add a paragraph to the Law on Asylum, making it possible for the immigration authorities – that is, the police and the border guards – to play a decisive role in refugee affairs as well [Act CXXXIX of 1997 Art 30, para 2]. Citing this as an increase in tasks, the border guards asked for and received a significant budget supplementation, while the budget of the corresponding civilian organization, the Office of Refugee and Migration Affairs, was decreased.

In the meantime, the police disregarded all budgetary constraints, kept getting into debt, and kept forcing the government to pay its debts.

### **The new catch phrase: Fight against organized crime**

In the recent past, the power of the police grew to supersede the power of society in new dimensions. In the name of – or rather, under the pretext of – fighting organized crime, the police obtained the right to temporarily (even for a year!) close down any business whose manager or employee is prosecuted for any of thirteen crimes, if suspected to be committed in the context of operating the business [Act LXXXIV of 1999, Art 5, para 1 and 2]. Closing down the business has to be ordered by the public notary of the local municipal government at the recommendation of the police. The maximum period of temporarily closing down is one year, which is plenty of time for a business to go completely bankrupt. The action of the public notary does not have to be supported by a legally binding court decision, not even by an indictment, it is sufficient ground if the police starts a criminal procedure. The crimes listed in the law vary in type and in severity: some of them are aggressive crimes (self-arbitration, robbery, blackmail), which truly warrant immediate action, while others include aiding prostitution and drug abuse. It is no secret that this law (which took effect on September 1, 1999) is openly against drug use and clubs where drugs are used. Because the law qualifies the use of soft drugs in small quantities as a crime, the police is authorized to close down any club if some of its guests are found to smoke marijuana, or if any of the guests arbitrarily taken in for interrogation and urine-testing are found to have consumed any type of „disco drug”.

Although it is the public notary who decides to close down the business, there is hardly any notary who would disregard a recommendation from the police. At the same time, the police only notify the notary about the initiation of a criminal procedure, or the final conclusion thereof, if they deem it necessary. If the offender is convicted at the final instance, the notary's discretion to order the business to be closed down ceases, that is, he must close down the business. However, if the police do not find it necessary to notify the notary about the conviction, the business may go on operating despite a final convicting court decision [Art 5, para 3].

Originally, the bill that was introduced to Parliament offered the alternative of a fine instead of closing down the business. This penalty would have been anywhere from five hundred thousand to one million forints (ten-twenty times the average monthly Hungarian wages) to be paid by the manager of the business. Although this provision was left out of the final version of the law that was passed, it would be hard to believe that the police simply let go of the revenue that this fine would have meant. This is underscored by the fact that the law authorizes the government to regulate the use of funds that are collected from fines.

The law requires tax authorities, financial institutions, the stock exchange, insurance companies, telecommunication companies and health care institutions to disclose any data handled by them if the investigative authorities approach them with a „urgent” request – even if there's no prior approval from a prosecutor yet for the action [Art 47-57]. If the prosecutor denies approval of the action „after the fact”, the data must be destroyed – however, in terms of the law, neither the data provider, nor the person concerned needs to be notified. In fact, they should not be notified, because any information that was obtained during a criminal investigation, but which is not part of a criminal procedure, is classified as a state secret.

The law against organized crime also regulates the issue of prostitution [Art 7-12]. Nowadays, most states try to push prostitution out of public spaces, realizing that it is not possible to eradicate this phenomenon altogether. According to the new Hungarian regulation, however, any bar where a prostitute works can be closed down because of aiding prostitution, any newspaper where a prostitute advertises herself can be fined, and the manager of a brothel can be sentenced to maximum 5 years of prison. In other words, the prostitutes are „left out on the streets”, in public space, or in the designated „tolerated zones” of public space. The prostitute may freely carry on her activities here, but police can always stop and check her, and may even fine her if she does not have the prescribed medical documents or if her solicitation is too pushy. Again, the lords of the street and of the tolerated zones are the police.

### **Covert information-gathering - status symbols of law enforcement agencies**

Before the transition the agencies of national security enjoyed priority over the use of secret-service instruments. The tapping of telephone lines and the opening of letters were the privileges of the national security agencies; they only shared their information with the police when they wished to do so. After the transition the police's share of the utilization of secret-service instruments continuously grew - and this is in order. In the meantime, however, a competition of prestige started amongst

the law enforcement agencies, with all of the agencies hoping to establish an independent authority of investigation and reconnaissance, a part of this being the authorization to use secret-service methods.

According to public opinion, the methods tied to judicial permission - covert house searching, opening of letters, and the tapping of telephone lines above all - are the most serious encroachments on privacy. In reality, before 1990 and probably today as well, common people cooperating with law enforcement agencies provided and continue to provide most information to crime-fighting authorities. No external permission is needed for this type of information gathering. Law enforcement agencies do not only utilize covert methods when searching after perpetrators of crimes but as a preventive measure against crimes. This means that they may secretly gather information on anyone and store this information for two years - without any real control - even if no criminal prosecution is initiated concerning this individual.

Nowadays the police, the four national security agencies, the border guards, the custom guards the revenue police and the so-called preventive service controlling the law enforcement agencies are all authorized to use covert information gathering not tied to judicial permission. Since these organizations conceal information from each other - although the law requires them to cooperate with each other - no one knows on how many individuals and for how many reasons various organizations are gathering information and how often one organization is searching after an undercover agent of another organization. Some of the secret-service scandals - the observation of the Baranya-county minority self-governments, the case of the ecological studies conducted for private reasons and primarily the Nyirfa-case - indicated that secret files contain a great amount of partly widely known, partly rumor-like data.

Secret information gathering is governed by an increasing number of regulations - as opposed to the pre-transition era - although no one may control the observance of these regulations. Despite the great amount of legislation there still exist branches of secret-service agencies, which operate in an unregulated, in fact, unlawful manner. Validly convicted individuals may only be interrogated by a police officer in the course of a new procedure. Despite this fact the police maintain an operative network inside the penitentiaries; the police officers operating under the investigative departments of the county police headquarters regularly summon the convicts and interrogate, recruit and with the consent of the penitentiaries, reward or punish them.

The law on organized crime clearly defines a role for the operative network of the penitentiaries. According to Art. 13-14 the preventive inspection of crimes is initiated by the police headquarters overseeing the residence of the penitentiary if the convict „displays evidence during the time of conviction of maintaining the lifestyle of a criminal or renews his criminal ties we may soundly conclude that he will commit another crime”. From what other source of information may the county police headquarters know of the renewing of the criminal ties of the convict if not from the operative officer or network working inside the penitentiary? The only question is, how will the judge imposing the punishment justify the ruling of criminal prevention, since the information serving as the basis of the ruling is a state secret.

Ten years ago the political transition started with the separation of the Ministry of Interior, representing governmental supervision, from the police, the authority enforcing laws. Now this process has taken an opposite direction. The Ministry of Interior acts as an authority in public administrative matters, its decisions may be appealed to the Minister himself, a politician [Act LXXXVI of 1993 Art 48 modified para 2]. These days, mostly former policemen manage the Ministry of Interior. The Minister himself is a lieutenant general; he used to be the national chief commissioner of the police. The chief of the Minister's cabinet is a major general, the state secretary for public administration is a brigadier, and department heads are colonels, lieutenant colonels. Of course, their service relationship is suspended, that is, their employment status is that of a civil servant, and they oversee the police as civilian government officials.

But do they also exercise civilian oversight over the policeman inside themselves?